

Appeal from decision of the Montana State Office, Bureau of Land Management, holding that oil and gas lease M 44821 terminated.

Affirmed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

A noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay rental on or before the anniversary date of the lease. If deficient payment has been made on or before the anniversary date but the deficiency is nominal, the lease does not terminate unless the lessee fails to pay the deficiency within the period prescribed in a notice of deficiency. Departmental regulation 43 CFR 3108.2-1(b), 48 FR 33673 (July 22, 1983), provides that a deficiency shall be considered nominal if it is not more than \$100 or more than 5 percent of the total payment due, whichever is less. Absent an affirmative billing error by BLM, an oil and gas lessee is not entitled to a notice of deficiency and an opportunity to correct it unless the deficiency is nominal.

APPEARANCES: Louise V. Lee, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Louise V. Lee has appealed from the January 9, 1984, decision of the Montana State Office, Bureau of Land Management (BLM), holding that oil and gas lease M 44821 automatically terminated on December 1, 1983, because the rental payment received was \$27.72 deficient. The total rental due was \$228, and the deficiency resulted because appellant improperly executed her rental check. Although she wrote "228.00" in numerals, she inadvertently wrote:

"Two hundred and 28/100" dollars. The check was submitted for collection but was honored for only \$200.28. <sup>1/</sup>

On December 15, 1983, the State Office mailed appellant a "receipt for payment" indicating an underpayment of \$27.72 and advising: "Unless other action is pending or the balance due is paid by the due date this lease may be terminated." Since the December 1 due date had already passed, the lease already had terminated. In her letter of January 17, 1984, responding to the BLM decision terminating the lease appellant states that she received the notice on December 22, 1983, and mailed BLM a check to cover the deficiency. In her statement of reasons appellant states: "I definitely feel it was through no fault of my own that I received the Notice of \$27.72 Underpayment two days past the 20-day period." Appellant's reference to the 20-day period indicates that she has confused the conditions under which a lease terminates with the conditions relating to reinstatement of a lease.

[1] Under 30 U.S.C. § 188(b) (1982), a noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law upon failure of a lessee to pay rental on or before the anniversary date of the lease. However, if a deficient payment has been made on or before the anniversary date and the deficiency is nominal, the lease does not automatically terminate unless the lessee fails to pay the deficiency within the period prescribed in the notice of deficiency. Under 43 CFR 3108.2-1(b), 48 FR 33673 (July 22, 1983), a deficiency shall be considered nominal if it is not more than \$100 or more than 5 percent of the total payment due, whichever is less. Appellant's underpayment constituted more than 5 percent of the total payment due, so the deficiency was not nominal. Absent an affirmative billing error by BLM, an oil and gas lessee is not entitled to a notice of deficiency and the opportunity to correct the deficiency unless the deficiency is nominal. See Great Basins Petroleum Co., 36 IBLA 42 (1978). Because appellant's payment was more than nominally deficient, BLM properly held that her lease terminated by operation of law on December 1, 1983.

If a lease terminates but full rental is submitted within 20 days after the anniversary date, the lease may be reinstated under 30 U.S.C. § 188(c) (1982) only if the failure to make timely payment was either justifiable or not due to a lack of reasonable diligence on the part of the lessee. Late submission of an oil and gas lease rental payment is not justifiable unless it is attributable to factors outside the control of the lessee. See Ram Petroleum, Inc. v. Andrus, 658 F.2d 1349 (9th Cir. 1981). Simple inadvertence in executing a check does not constitute a circumstance beyond the lessee's control. Thus, even if BLM had notified appellant of her underpayment in time for her to submit a check for the deficiency and a petition for reinstatement before December 20, appellant's lease would not have been eligible for reinstatement under 30 U.S.C. § 188(c) (1982). Where failure to make timely payment is attributable to simple inadvertence, a lease may

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<sup>1/</sup> Appellant had made the same mistake the previous year, but because she had submitted her deficient payment several weeks before the anniversary date, BLM's notice of deficiency arrived in time for her to submit full rental by the anniversary date.

be reinstated if a petition is filed and the requirements of 30 U.S.C. § 188(d) and (e) (1982) are met, as the decision below advised. Appellant did not follow the procedures indicated to seek reinstatement of her lease under these provisions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Gail M. Frazier  
Administrative Judge

We concur:

Bruce R. Harris  
Administrative Judge

C. Randall Grant, Jr.  
Administrative Judge

